

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FENNER INVESTMENTS, LTD.

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PLAINTIFF,

§

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v.

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CIVIL ACTION NO. 6:08cv273

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HEWLETT-PACKARD COMPANY

§

JURY TRIAL

and DELL, INC.,

§

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DEFENDANTS.

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PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Fenner Investments, Ltd., ("Fenner") for its Complaint against Defendants Hewlett-Packard Company ("Hewlett-Packard") and Dell, Inc. ("Dell") alleges as follows:

THE PARTIES

1. Fenner is a limited partnership duly organized and existing under the laws of the State of Texas, having a principal place of business in Richardson, Texas.

2. Hewlett-Packard is a corporation duly organized and existing under the laws of Delaware with its principal place of business at 300 Hanover St., Palo Alto, California 94304. Hewlett-Packard may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

3. Dell is a corporation duly organized and existing under the laws of Delaware with its principal place of business at 1 Dell Way, Round Rock, Texas 78682-2222. Dell may be served with process by serving its registered agent, Corporation Service Company at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

JURISDICTION

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.* The Court has personal jurisdiction over Defendants in that each of them has committed acts within Texas and this judicial district giving rise to this action and each of Defendants has established minimum contacts with the forum such that the exercise of jurisdiction over each of Defendants would not offend traditional notions of fair play and substantial justice.

VENUE

5. Each of the Defendants has committed acts within this judicial district giving rise to this action and does business in this district, including offering for sale, making sales and providing service and support to their respective customers in this district. Acts of infringement occur in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

INFRINGEMENT OF U.S. PATENT NO. 7,145,906

6. On December 5, 2006, United States Patent No. 7,145,906 (“the ’906 Patent”) was duly and legally issued for an invention entitled “Packet Switching Node.” A copy of the ’906 Patent is attached as Exhibit A. A copy of the certificate of correction for the ’906 Patent is attached as Exhibit B, and a copy of claims of the ’906 Patent incorporating the corrections reflected on the certificate of correction is attached as Exhibit C.

7. Fenner is wholly owned by members of the Fenner family. Peter R. Fenner is the sole inventor of the ’906 Patent assigned to Fenner. The ’906 Patent relates to Mr. Fenner’s work in satisfying the 1989 SBIR Program Topic Number N89-037 for the United States Navy.

The investigation was disclosed to the United States Navy in a submission entitled: “An addressing technique for U.S. Navy traffic in a multimedia environment.”

8. The '906 Patent was assigned to Fenner Investments, Ltd., and Fenner Investments, Ltd. continues to hold all rights and interests in the '906 Patent.

9. Hewlett-Packard has in the past and is now engaging, and will in the future engage in, unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. Hewlett-Packard products, including but not limited to HP Ethernet 5300 Family Switches, infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

10. Dell has in the past and is now engaging, and will in the future engage in, unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. Dell's products, including but not limited to Dell Managed Ethernet Switches such as the 35XX Family, infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

11. Each of Defendants' acts of infringement has caused damage to Fenner, and Fenner is entitled to recover from each Defendant the damages sustained by Fenner as a result of their individual wrongful acts in an amount subject to proof at trial. Each of Defendants' infringement of Fenner's exclusive rights under the '906 Patent will continue to damage Fenner's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

INFRINGEMENT OF U.S. PATENT NO. 5,842,224

12. On November 24, 1998, United States Patent No. 5,842,224 (“the '224 Patent”) was duly and legally issued for an invention entitled “Method and Apparatus for Source Filtering

Data Packets Between Networks of Differing Media.” A copy of the ’224 Patent is attached as Exhibit D.

13. Fenner is wholly owned by members of the Fenner family. Peter R. Fenner is the sole inventor of the ’224 Patent assigned to Fenner. The ’224 Patent relates to Mr. Fenner’s work in satisfying the 1989 SBIR Program Topic Number N89-037 for the United States Navy. The invention was disclosed to the United States Navy in a submission entitled: “An addressing technique for U.S. Navy traffic in a multimedia environment.”

14. The ’224 Patent was assigned to Fenner Investments, Ltd., and Fenner Investments, Ltd. continues to hold all rights and interests in the ’224 Patent.

15. Hewlett-Packard has in the past and is now engaging, and will in the future engage in, unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the ’224 Patent. Hewlett-Packard’s products, including but not limited to the HP Ethernet 5300 Family Switches, infringe at least claims 3 and 8 of the ’224 Patent.

16. Dell has in the past and is now engaging, and will in the future engage in, unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the ’224 Patent. Dell’s products, including but not limited to the Dell Managed Ethernet Switches such as the 35XX Family, infringe at least claims 3 and 8 of the ’224 Patent.

17. Each of Defendants’ acts of infringement has caused damage to Fenner, and Fenner is entitled to recover from each Defendant the damages sustained by Fenner as a result of their individual wrongful acts in an amount subject to proof at trial. Each of Defendants’ infringement of Fenner’s exclusive rights under the ’224 Patent will continue to damage Fenner’s business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

JURY DEMAND

18. Pursuant to Federal Rule of Civil Procedure 38, Fenner demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Fenner prays for judgment and seeks relief against each of the Defendants as follows:

- (a) For judgment that the '906 Patent has been and will continue to be infringed by Defendants Hewlett-Packard and Dell;
- (b) For judgment that the '224 Patent has been and will continue to be infringed by Defendants Hewlett-Packard and Dell;
- (c) For an accounting of all damages sustained by Fenner as the result of the acts of infringement by each Defendant;
- (d) For preliminary and permanent injunctions enjoining the aforesaid acts of infringement by each Defendant, their officers, agents, servants, employees, subsidiaries and attorneys and those persons acting in concert with them, including related individuals and entities, customers, representatives, original equipment manufacturers, dealers, and distributors;
- (e) For actual damages together with prejudgment interest;
- (f) For an award of attorneys' fees pursuant to 35 U.S.C. § 285 or otherwise permitted by law;
- (g) For all costs of suit; and
- (h) For such other and further relief as the Court may deem just and proper.

DATED: June 27, 2008.

Respectfully Submitted,

LOEWINSOHN FLEGLE DEARY, L.L.P.

/s/ Jim L. Flegle

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